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999 E Street, N.W.

Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6533

DATE COMPLAINT FILED: February 21, 2012

DATE OF NOTIFICATION: February 28, 2012

DATE OF LAST RESPONSE: April 18, 2012

DATE ACTIVATED: May 18, 2012

EXPIRATION OF SOL: August 31, 2016
to December 13, 2016

COMPLAINANT:

Colorado Republican Committee

RESPONDENTS:

Perry Haney
Perry Haney for Congress f/k/a Perry Haney
for Congress Exploratory Committee
and Terrance Snyder in his official capacity
as treasurer¹

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431(2)
2 U.S.C. § 432(e)(1)
2 U.S.C. § 433(a)
2 U.S.C. § 434(a)
11 C.F.R. § 100.72
11 C.F.R. § 100.131
11 C.F.R. § 101.1(a)

INTERNAL REPORTS CHECKED:

Disclosure Reports

OTHER AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint in this matter alleges that Perry Haney, a candidate for Congress in Colorado's Sixth Congressional District, violated the Federal Election Campaign Act of 1971, as amended, (the "Act") by failing to timely register and report with the Commission after he

¹ We separately notified Perry Haney for Congress and Perry Haney for Congress Exploratory Committee. On July 10, 2012, Perry Haney for Congress amended its Statement of Organization to name Terrance Snyder as treasurer.

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**MUR 6533 (Perry Haney for Congress)
First General Counsel's Report**

1 became a candidate. The Complaint alleges that Haney triggered the Act's \$5,000 candidate
2 threshold when he contributed \$50,000 to his campaign on July 19, 2011, or at the latest when
3 videos referring to Haney as a candidate were uploaded to the Haney for Congress YouTube
4 channel on August 31, 2011.

5 In a joint response, Respondents assert that Haney was "testing the waters" at the time of
6 the activity at issue and therefore was not subject to the Act's registration and reporting
7 requirements. Respondents state that the YouTube videos were not made available to the public
8 until Haney registered as a candidate with the Commission on December 14, 2011. Accordingly,
9 Respondents ask the Commission to dismiss the Complaint and close the file.

10 We conclude that the August 2011 YouTube postings do not indicate that Haney had
11 decided to become a candidate in advance of the date that is reflected in Respondents' filings
12 with the Commission. The amount of receipts and disbursements of Haney's committee, Perry
13 Haney for Congress ("PHFC"), during the testing the waters period do not alter that conclusion.
14 Nonetheless, certain statements the candidate made before he declared his candidacy — namely,
15 statements in a September 19, 2011, social media post attributed to him, and statements in an
16 interview published in a trade periodical on November 18, 2011 — demonstrate that Haney had
17 decided to become a candidate earlier than he reported. Despite the apparent violation, PHFC's
18 first required disclosure report, the 2011 Year End Report, would have been filed on time
19 notwithstanding which of those two dates Haney is deemed to have become a candidate. For that
20 reason, we recommend that the Commission dismiss the allegations that Respondents failed to
21 timely register and report with the Commission, find no reason to believe that PHFC filed
22 untimely disclosure reports with the Commission, and close the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Summary

Haney states that, starting in February 2011, he “tested the waters” to decide whether to run for Congress in Colorado’s Third District, or Sixth District, or not at all. Resp. at 2 (Apr. 18, 2012). According to Respondents, the boundaries of the congressional district were then under review by Colorado courts; Haney did not know in which district he would be qualified to run or “whether the redrawn lines created a viable path” for his candidacy. *Id.* They further claim, bolstered by a supporting affidavit from former Haney consultant Terry Snyder, that Haney’s testing the waters activities consisted of traveling around Colorado and meeting with voters “to determine whether he would have any support for a run for Congress.” *Id.*; Terry Snyder Decl. ¶ 5 (Apr. 10, 2012).

According to Respondents, Haney consistently told voters that he had not made up his mind to run and would not do so until the district boundaries were settled. Resp. at 2. Respondents assert that they never made any statement that Haney intended to run until he filed his Statement of Candidacy on December 14, 2011, which was a little over a week after the congressional district boundaries were determined by court order. *Id.* at 5. During Haney’s purported “testing the waters” period, he loaned \$1,000, \$50,000, and \$50,000 to PHFC on June 6, July 19, and September 30, 2011, respectively. See PHFC 2011 Year End Report.

Three videos regarding Haney found on YouTube meet the description of the video described in the Complaint; that is, they contain the statement “Uploaded by HaneyForCongress on Aug 31, 2011.”² These videos begin with screen shots of statements attributed to “Perry’s Mother” and Haney campaign website addresses. Haney’s mother then speaks about Haney’s

² PHFC’s YouTube channel, <http://www.youtube.com/user/HaneyForCongress>, see Resp. at 5, has been discontinued.

- 1 experiences growing up, and the videos each end with another screen shot including a reference
2 to Haney's "campaign" website addresses, as set forth below:

	Opening Screen Shot	Ending Screen Shot
Video #1 ³	Perry's Mother on Why He Became a Chiropractor www.sendachiropractortocongress.com www.perryhaneyforcongress.com	Send a Chiropractor to Congress! www.SendAChiropractorToCongress.com
Video #2 ⁴	Perry's Mother: "Perry Worked His Way Through College With Union Jobs" www.perryhaneyforcongress.com	Dr. Perry Haney www.perryhaneyforcongress.com
Video #3 ⁵	Perry's Mother: "Perry Grew Up In Hard Times in So. Colorado" www.perryhaneyforcongress.com	Dr. Perry Haney www.perryhaneyforcongress.com

- 3
4 The websites referenced in the videos have been discontinued and are unavailable, but for a few
5 sections of www.perryhaneyforcongress.com.⁶

- 6 In their response to the Complaint, Respondents assert that the YouTube videos cited in
7 the Complaint were available only to a small number of persons to whom Haney provided a
8 special link, and were not made available generally until December 2011, when Haney publicly
9 declared his candidacy. Resp. at 1-3; Bradley Scott Revare Decl. (Apr. 11, 2012).⁷ According to
10 Revare, the videos were uploaded August 31, 2011, using an option available on YouTube that
11 does not allow videos to be found through searches, does not list the video on the account
12 holder's "channel," and cannot be viewed other than through a private, custom hyperlink. *Id.* at

³ The screen below the video contains the text "Help make Dr. Haney the first chiropractor in Congress!" See <http://www.youtube.com/watch?v=dwIlnn8-ABl>.

⁴ <http://www.youtube.com/watch?v=Adt28thI3Mk>.

⁵ <http://www.youtube.com/watch?v=-GYDz6iSYAw>.

⁶ The YouTube screens below the videos list Haney's Facebook and Twitter sites, www.facebook.com/perryhaneyforcongress and www.twitter.com/perryhaneyDCMD, which have also been discontinued.

⁷ Revare describes himself as the supervisor of "the creation of the Perry Haney exploratory and campaign website, YouTube account and the content placed thereon." Revare Decl. ¶ 1.

¶¶ 4-5. Revare further attests that “[t]he videos were privately shared with a small group of advisors, interested election officials, a few donors and campaign supporters active in the exploratory committee. The purpose of sharing the video with these people was to obtain their reaction and advice just like pre-viewing a television advertisement before it is aired.” *Id.* at ¶¶ 6-7. Revare explains that the videos were intended to be made public only after Haney announced his candidacy, and for that reason included the phrase “Perry Haney for Congress” and references to the campaign’s website. *Id.* at ¶¶ 8-9. Revare also asserts that the videos were not made available to the public until December 2011, despite the August 31, 2011, upload date displayed on YouTube. *Id.* at ¶ 10.

On October 27, 2011, Haney filed a Statement of Candidacy with the Commission designating Perry Haney for Congress Exploratory Committee (“PHFCEC”) as his principal campaign committee. On the same date, PHFCEC filed a Statement of Organization. Neither filing identified Haney’s congressional district. A cover letter from Haney’s counsel explained that “Haney has not determined which district . . . he may be a candidate in due to uncertainty in the Colorado redistricting process,” and that “[o]nce a decision is made on the district number and election cycle, and if Mr. Haney decides to run for federal office, amended Forms 1 [Statement of Organization] and 2 [Statement of Candidacy] will be filed with your office.” Letter from Nail Reiff, Counsel, Perry Haney for Cong. Exploratory Comm., to FEC Public Records Office (Oct. 27, 2011). PHFCEC never filed any disclosure reports.

On December 14, 2011, Haney issued a press release announcing his campaign and filed with the Commission a Statement of Candidacy for the Sixth District of Colorado, designating PHFC as his principal campaign committee. On the same day, PHFC filed a Statement of Organization with the Commission. On February 1, 2012, PHFC filed an amended Year End

1 Report covering June 6, 2011, through December 31, 2011,⁸ disclosing \$111,975 in receipts
2 (\$101,000 of which was loans from the candidate) and \$78,893 in disbursements during Haney's
3 purported "testing the waters" period.

4 On February 21, 2012, the Colorado Republican Committee filed the Complaint in this
5 matter. The Complaint alleges that Haney, while purportedly "testing the waters," became a
6 candidate within the meaning of the Act but failed to timely register and report with the
7 Commission. The Complaint alleges that on August 31, 2011, a campaign video was uploaded
8 to the PHFC YouTube channel that referred to Haney's campaign websites
9 www.perryhaneyforcongress.com and www.sendachiropractortocongress.com. Compl. at 1
10 (Feb. 21, 2012). The Complaint alleges that Haney crossed the Act's \$5,000 candidate threshold
11 on July 19, 2011, when he contributed \$50,000 to his committee or, at the latest, on August 31,
12 2011, when he referred to himself as a candidate in the video. *Id.* at 3.⁹

13 In addition to the videos referenced in the complaint, our review of publicly available
14 information located a purported copy of a Facebook posting by Haney which, according to an
15 internet article, was one of many he posted on his Perry Haney for Congress Facebook page:

16 **Perry Haney for Congress**

17
18 One of the themes of this campaign is being more transparent than the career
19 politicians. The voters of Colorado deserve it.

20
21 My younger staffers have me using an app called Foursquare for the campaign. It
22 allows you to follow my exact location as I travel the district. Next time you see me
23 'checked in' at a coffee shop in your area, let's meet and talk about the issues
24 important to YOU.

⁸ PHFC initially filed a 2011 Year End Report on January 31, 2012, covering September 1 to December 31, 2011.

⁹ Haney ended his campaign on February 15, 2012, the day after the Colorado Republican Committee announced it was filing the Complaint against Haney. See Kurtis Lee, *Perry Haney Ends CD 6 Candidacy Less Than 24 Hours After GOP Filed Complaint*, DENVER POST, February 15, 2012, available at http://www.denverpost.com/breakingnews/cj_19975329?IADID=Search-www.denverpost.com-www.denverpost.com. This article is attached to the Response.

Sign up to follow me here: <https://foursquare.com/perryhaneydcm>
Like – Comment – Share – September 19, 2011 at 4:55 pm

More Ethics Problems for Haney: Colorado GOP Files Complaint Over Election Law Violation,
COLORADO PEAK POLITICS, Feb. 14, 2012,
[http://www.coloradopeakpolitics.com/diary/1027/more-ethics-problems-for-haney-colorado-gop-](http://www.coloradopeakpolitics.com/diary/1027/more-ethics-problems-for-haney-colorado-gop-files-complaint-over-election-law-violation)
[files-complaint-over-election-law-violation](http://www.coloradopeakpolitics.com/diary/1027/more-ethics-problems-for-haney-colorado-gop-files-complaint-over-election-law-violation). Haney's Facebook and Foursquare.com

communications are otherwise unavailable.

Haney also gave an interview, published on November 18, 2011, in which he was quoted
as follows:

I have read the research purporting to show a correlation between
chiropractic and strokes. This is a fallacy. . . . This is just one of the
many fallacies *I can speak out on as member of Congress*.

My door plate in Congress will say Perry Haney, DC, MD. It will be an
honor to invite chiropractors from around the country to the unveiling. It
will be *momentous to have an advocate for chiropractic in the halls of*
Congress.

Campaigning for the Chiropractic Cause — Perry Haney, DC, MD, Sets His Sights on a

Congressional Seat and a Chance To Build a Brighter Future for Health Care, DYNAMIC

CHIROPRACTIC, Nov. 18, 2011, available at

<http://www.dynamicchiiropractic.com/mpacms/dc/article.php?id=55620> ("DYNAMIC

CHIROPRACTIC") (emphasis added). The interview closes with the statement, "To learn more
about Dr. Haney and for updates on his campaign, visit www.perryhaneyforcongress.com." *Id.*

B. Legal Analysis

1. Legal Standards Applicable in Testing the Waters Matters

An individual is deemed to be a "candidate" for purposes of the Act if he or she receives
contributions or makes expenditures in excess of \$5,000. 2 U.S.C. § 431(2). Once an individual

1 meets the \$5,000 threshold, a candidate has 15 days to designate a principal campaign committee
2 by filing a Statement of Candidacy with the Commission. 2 U.S.C. § 432(e)(1); 11 C.F.R.
3 § 101.1(a). The principal campaign committee must then file a Statement of Organization within
4 ten days of its designation, *see* 2 U.S.C. § 433(a), and must file disclosure reports with the
5 Commission in accordance with 2 U.S.C. § 434(a) and (b).

6 The Commission has established limited exemptions from these thresholds, which permit
7 an individual to test the feasibility of a campaign for federal office without becoming a candidate
8 under the Act. Commonly referred to as the "testing the waters" exemptions, Sections 100.72
9 and 100.131 of the Commission's regulations exclude from the definitions of "contribution" and
10 "expenditure" funds received and payments made to determine whether an individual should
11 become a candidate.¹⁰ 11 C.F.R. §§ 100.72, 100.131. "Testing the waters" activities include, but
12 are not limited to, payments for polling, telephone calls, and travel. 11 C.F.R. §§ 100.72(a),
13 100.131(a). An individual who is "testing the waters" need not register or file disclosure reports
14 with the Commission unless and until the individual subsequently decides to run for federal
15 office or conducts activities that indicate he or she has decided to become a candidate. *See id.*;
16 Advisory Op. 1979-26 (Grassley).

17 All funds raised and spent for "testing the waters" activities are, however, subject to the
18 Act's limitations and prohibitions. 11 C.F.R. §§ 100.72(a), 100.131(a). And once an individual
19 begins to campaign or decides to become a candidate, funds that were raised or spent to "test the
20 waters" apply to the \$5,000 threshold for qualifying as a candidate, and the candidate must
21 register with the Commission. *Id.* And after an individual reaches candidate status, all

¹⁰ The Commission has emphasized the narrow scope of these exemptions to the Act's disclosure requirements. *See* Explanation and Justification for Regulations on Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (Mar. 13, 1985) ("The Commission has, therefore, amended the rules to ensure that the 'testing the waters' exemptions will not be extended beyond their original purpose. Specifically, these provisions are intended to be limited exemptions from the reporting requirements of the Act . . .").

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1 reportable amounts from the beginning of the "testing the waters" period must be disclosed on
2 the first financial disclosure report filed by the candidate's committee, even if the funds were
3 received or expended prior to the current reporting period. *See* 11 C.F.R. §§ 101.3, 104.3(a),
4 104.3(b).¹¹

5 Certain activities may indicate that the individual has decided to become a candidate and
6 is no longer "testing the waters." Commission regulations set out five non-exclusive factors to
7 be considered in determining whether an individual has decided to become a candidate: whether
8 the potential candidate is (1) using general public political advertising to publicize his or her
9 intention to campaign for federal office; (2) raising funds in excess of what could reasonably be
10 expected to be used for exploratory activities or undertaking activity designed to amass
11 campaign funds that would be spent after he or she becomes a candidate; (3) making or
12 authorizing written or oral statements that refer to him or her as a candidate for a particular
13 office; (4) conducting activities in close proximity to the election or over a protracted period of
14 time; or (5) taking action to qualify for the ballot under state law. 11 C.F.R. §§ 100.72(b),
15 100.131(b). These regulations seek to draw a distinction between activities directed to an
16 evaluation of the feasibility of one's candidacy and conduct signifying that a decision to become
17 a candidate has been made. *See* Advisory Op. 1981-32 (Askew).

18 2. Haney's Activities

19 The Complaint alleges that Haney triggered the Act's \$5,000 candidate threshold when
20 he contributed \$50,000 to his campaign on July 19, 2011, several months before he registered as
21 a candidate with the Commission. *See* 11 C.F.R. §§ 100.72(b)(2), 100.131(b)(2) (candidate

¹¹ An individual does not become a candidate solely by voluntarily registering and reporting with the Commission, nor is such individual or the individual's committee required to file all disclosure reports under the Act and Commission regulations, unless the individual becomes a candidate under the Act and Commission regulations. 11 C.F.R. § 104.1(b).

1 status may be indicated by raising funds in excess of what could reasonably be expected to be
2 used for exploratory activities or undertaking activity designed to amass campaign funds that
3 would be spent after he or she becomes a candidate). PHFC disclosed on its 2011 Year End
4 Report receipts totaling \$111,975 (\$101,000 of which was from Haney) prior to Haney's formal
5 announcement of his candidacy on December 14, 2011.¹²

6 This amount is within the range that the Commission has found to be reasonable for
7 "testing the waters" for congressional campaigns in the absence of additional indicia of candidate
8 status. *See, e.g.*, MUR 5930 (Sehuring) (complaint dismissed where exploratory congressional
9 committee raised \$194,000); MUR 5703 (Rainville) (no reason to believe where \$100,000
10 raised); MUR 5661 (Butler) (same).

11 The Complaint also alleges that, at the latest, Haney triggered candidate status when the
12 videos referring to Haney as a candidate were uploaded to the Haney for Congress YouTube
13 channel on August 31, 2011. In determining whether an individual has gone from "testing the
14 waters" to becoming a "candidate," the Commission has considered whether the individual has
15 engaged in activities or made statements that would indicate that he or she has decided to run for
16 federal office. *See* 11 C.F.R. §§ 190.72(b)(3), 100.131(b)(3) (candidate status may be indicated
17 by making or authorizing written or oral statements that refer to him or her as a candidate for a
18 particular office).¹³ Once an individual engages in such activities, he or she is a candidate under
19 the Act and the "testing the waters" exception is no longer available.

¹² We have included in the \$111,975 figure all of the \$2,075 in unitemized contributions received during the entire reporting period through December 31, 2011.

¹³ *See, e.g.*, MUR 5693 (Aronsohn) (Commission found probable cause to believe that individual became a candidate when he sent a solicitation letter that included statements such as "But I have the energy, the experience, and the determination to win this race. And as evidenced by the attached news article, I am ready to begin fighting for our future...now"; "Every dollar we receive in the next few weeks can help us prepare for this fight against [incumbent] Scott Garrett"; and "We have come a long way in just a few short weeks. And with your support, we can go the distance"); MUR 5251 (Rogers) (Commission found reason to believe that individual no longer testing

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1 The videos uploaded onto PHFC's YouTube channel on August 31, 2011, contain clear
2 references to Haney as a candidate by including the campaign website addresses
3 www.perryhaneyforcongress.com and www.sendachiropractortocongress.com.¹⁴ In a sworn
4 declaration, however, Respondents aver that the videos were uploaded initially in "unlisted"
5 form available only to "a small group of advisors, interested election officials, a few donors and
6 campaign supporters active in the exploratory committee" in order "to obtain their reaction and
7 advice." Resp. at 3; Revare Decl. ¶¶ 6-7. Respondents do not state how many individuals
8 comprised the "small group" that was provided access to Haney's campaign videos, but the
9 available information does not indicate that the videos were available without restriction before
10 December 2011. The mere preparation of campaign materials in advance of a declaration of
11 candidacy does not by itself provide adequate evidence to support a reason to believe that Haney
12 decided to become a candidate at that time. And the Snyder declaration submitted with the
13 Response attests that Haney had not decided to become a candidate when the YouTube video
14 was uploaded and only so decided in December 2011. See Snyder Decl. ¶¶ 10-11. It is our view
15 that the purpose identified in the Response for creating the videos containing Haney's statements

the waters when he sent a fundraising letter that contained the statement, "I know that I will effectively serve your interests in Congress and that because of the close working relationship with the President and the leadership of Congress that I will immediately work for the benefit of Colorado. Won't you please fill out the enclosed reply card indicating how you can help my campaign?" and reportedly said, "I want to be your congressman and need your help to win the seat" at a fundraising event). But see MUR 5934 (Thompson) (Commission failed, by a vote of 2-4, to find reason to believe, and then voted to dismiss allegations, that Thompson became a candidate by making statements such as "I can't remember exactly the point that I said, 'I'm going to do this,' but when I did, the thing that occurred to me 'I'm going to tell people that I am thinking about it and see what kind of reaction I get to it,'" and was quoted as saying that he was "testing the waters" about a run, "but the waters feel pretty warm to me" and "You're either running or not running. I think the steps we've taken are pretty obvious").

¹⁴ The websites have been discontinued and are unavailable except for limited portions of www.perryhaneyforcongress.com, which do not contain statements suggesting that Haney was acting as a candidate before he registered with the Commission in December 2011. An internet article from July 2011 describes Haney's website as containing a disclaimer that it was paid for by "[t]he Perry Haney for Congress Exploratory Committee" and as not indicating in which congressional district Haney will run. *And That's Why I'm Running for Congress . . . Somewhere in Colorado*, COLORADOPOLS.COM, July 20, 2011, <http://www.coloradopolis.com/showDiary.do?diaryId=16072>.

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1 as a candidate — to prepare for a campaign if one were to ensue — is consistent with testing the
2 waters activities. See 11 C.F.R. §§ 100.72(a), 100.131(a).¹⁵

3 Haney's purported Facebook posting on September 19, 2011, on the other hand, provides
4 evidence that, by that time, Haney had transitioned to candidate status. It is titled "Perry Haney
5 for Congress" and states, "[o]ne of the themes of *this campaign* is being more transparent than
6 the career politicians. The voters of Colorado deserve it." COLORADO PEAK POLITICS, *supra*
7 (emphasis added). If Haney authored or authorized this posting, as reported, then this expression
8 of campaign themes reflects that Haney had decided to become a candidate and was not merely
9 evaluating the feasibility of a candidacy. See AO 1981-32 (Askew).

10 Haney's quoted statements in an interview published on November 18, 2011, also
11 suggest, though perhaps not quite as strongly as the Facebook posting, that he was no longer
12 testing the waters but had decided to become a candidate: "This is just one of the many fallacies
13 I can speak out on *as a member of Congress*. . . . My door plate *in Congress* will say Perry
14 Haney, DC, MD. . . . It will be momentous to have an advocate for chiropractic *in the halls of*
15 *Congress*." DYNAMIC CHIROPRACTIC, *supra* (emphasis added). In addition, the interview
16 publishes Haney's campaign website address, itself containing a clear statement indicative of a
17 candidacy: "www.perryhaneyforcongress.com."¹⁶

¹⁵ Respondents state that Haney began "testing the waters" in February 2011, see Resp. at 2, but he did not file a Statement of Candidacy with the Commission until ten months later in December 2011. See 11 C.F.R. §§ 100.72(b)(4), 100.131(b)(4) (candidate status may be indicated by conducting activities over a protracted period of time); AO 1981-32 (Askew) (engaging in proposed "testing the waters" activities beyond a period of several months may affect the applicability of the exemption). Haney does not appear to have reached candidate status on the basis of the duration of his "testing the waters," however, considering that he does not appear to have conducted appreciable activity during the first several months of 2011, as reflected in PHFC's 2011 Year End Report disclosing no receipts until candidate loans in June and July 2011, no contributions from another person until September 2011, and no disbursements until July 2011.

¹⁶ Dynamic Chiropractic claims a circulation of 60,000 chiropractors, "the most read publication in the profession." See <http://www.mpsmedia.com/products/dc.php>.

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1 Haney's statements indicative of candidacy — along with the inclusion of his campaign
2 website address — are comparable to statements addressed in MUR 5251 (Rogers). There, the
3 Commission found reason to believe that an individual was no longer testing the waters when he
4 sent a fundraising letter that described what he would do in Congress for his constituents: "I
5 know that I will effectively serve your interests in Congress and that because of the close
6 working relationship with the President and the leadership of Congress that I will immediately
7 work for the benefit of Colorado. Won't you please fill out the enclosed reply card indicating
8 how you can help my campaign?" First Gen. Counsel's Rpt. at 5, MUR 5251 (Rogers);
9 Commission Certification (Mar. 2, 2004).¹⁷ For the same reasons, Haney's quoted affirmations
10 about how he will serve his constituents when he arrives in Congress evidence that he had
11 decided to become a candidate and was not merely evaluating the viability of his candidacy. *See*
12 11 C.F.R. §§ 100.72(b)(3), 100.131(b)(3); Advisory Op. 1981-32 (Askew).¹⁸

13 If the date of his candidacy is deemed to have commenced not later than the
14 September 19, 2011 date of the social media statements attributed to Haney — given that he had
15 raised and spent more than \$5,000 by that time — Haney had until October 4, 2011, to designate
16 a principal campaign committee by filing a Statement of Candidacy with the Commission. *See*
17 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a). Haney's principal campaign committee then had ten
18

¹⁷ The inclusion of Haney's campaign web address is roughly analogous to the explicit invitation in Rogers to fill out a reply card to help his campaign.

¹⁸ As noted, Respondents contend that Haney's decision to become a candidate turned, in part, on the resolution of the district boundaries question. Resp. at 2. Haney's own statements, however, reflect that he had decided to become a candidate regardless of the result of the litigation over district boundaries. As such, the Commission's regulations deem his candidacy to have commenced at that time.

1 days, or until October 14, 2011, to file a Statement of Organization. *See* 2 U.S.C. § 433(a).¹⁹
2 Alternatively, based on the November 18, 2011, publication date of the statements quoted in his
3 interview, Haney had until December 3, 2011, to designate a principal campaign committee and
4 until December 13, 2011, for the committee to file its Statement of Organization.

5 Whether the date Haney became a candidate is based on date of the social media
6 statements or the statements quoted in the interview, the filings made by Haney and his
7 Committee regarding his candidacy were untimely. Haney designated a principal campaign
8 committee by filing a Statement of Candidacy and PHFC filed its Statement of Organization on
9 December 14, 2011.

10 Notwithstanding those late filings, however, PHFC timely filed its initial disclosure
11 report, the 2011 Year End Report, on January 31, 2012 (with an amendment filed the following
12 day). *See* 2 U.S.C. § 434(a)(2)(B). And, in similar circumstances, the Commission found reason
13 to believe but decided to take no further action.²⁰ *See* MUR 5251 (Rogers) (committee registered
14 with the Commission five weeks late but timely filed its initial disclosure report). Accordingly,
15 we recommend that the Commission dismiss as a matter of prosecutorial discretion the allegation
16 that Haney did not timely register with the Commission in violation of 2 U.S.C. § 432(e)(1) and
17 11 C.F.R. § 101.1(a), and the allegation that PHFC failed to timely file a Statement of
18 Organization in violation of 2 U.S.C. § 433(a). *See Heckler v. Chaney*, 470 U.S. 821 (1985).

¹⁹ Haney filing a Statement of Candidacy designating PHFCEC as his principal campaign committee and PHFCEC filing a Statement of Organization with the Commission in October 2011 did not obligate Haney and PHFCEC to file disclosure reports, and they never did. *See* 11 C.F.R. § 104.1(b) (an individual shall not become a candidate solely by voluntarily filing a report). Respondents do not mention their October 2011 filings in their Response.

²⁰ The Commission announced in 2007 that it would henceforth resolve matters through dismissal in place of its "reason to believe but take no further action" determinations. *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007).

1 In addition, Respondents timely filed the 2011 Year End Report, and we therefore
2 recommend that the Commission find no reason to believe that PHFC violated 2 U.S.C. § 434(a).
3 Finally, we recommend that the Commission close the file.

4 **III. RECOMMENDATIONS**

- 5 1. Dismiss, as a matter of prosecutorial discretion, the allegation that Perry Haney
6 violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a);
7
8 2. Dismiss, as a matter of prosecutorial discretion, the allegation that Perry Haney for
9 Congress f/k/a Perry Haney for Congress Exploratory Committee and Terrance
10 Snyder in his official capacity as treasurer violated 2 U.S.C. § 433(a);
11
12 3. Find no reason to believe that Perry Haney for Congress f/k/a Perry Haney for
13 Congress Exploratory Committee and Terrance Snyder in his official capacity as
14 treasurer violated 2 U.S.C. § 434(a);
15
16 4. Approve the attached Factual and Legal Analysis;
17
18 5. Close the file; and

6. Approve the appropriate letters.

Anthony Herman
General Counsel

Date: Aug. 16, 2012

BY: Daniel A. Petalas, P-3
Daniel A. Petalas
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